BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 07.03.2008
CORAM
THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN
C.RP.(NPD).Nos.1489 & 1490 of 2003
and
C.M.P.Nos.16181, 16182, 17432 & 17433 of 2003
and
C.M.P.Nos.2150 and 2152 of 2007

K.B.Subramaniam .. Petitioner in both the above CRPs

Vs.

1.Sathyavathamma .. Sole Respondent in CRP.1489/03 1st respondent in CRP.1490/03

2.Niranjan .. 2nd respondent in CRP.1490/03
3.Suhurlatha .. 3rd respondent in CRP.1490/03

Prayer:-These revisions have been preferred under Section 25 of the Tamil Nadu Building (Lease and Rent Control) Act, against the order dated 24.09.1999 in RCA.No.487 and 503 of 1996 passed bythe VII Judge, Court of Small Causes, Chennai, reversing the orders dated 30.01.1995 in RCOP.No.2431 of 1991 and RCOP.No.368 of 1992 on the file of the XIV Judge, Court of Small Causes,Chenna, respectively.

For Petitioner : Mr.T.S.Rajamohan, Advocate (in both CRPs)
For Respondents : Mr.P.Subbha Reddy, Advocate(in both CRPs)

COMMON ORDER
CRP.NPD.No.1489 of 2003 has been directed against the judgment in RCA.No.487 of 1996 on the file of the VII Judge, Court of Small Cause, Chennai, which had arisen out of the order in RCOP.No.2431 of 1991 on the file of the XIV Judge, City Civil Court, Chennai.

2.CRP.NPD.No.1490 of 2003 was directed against the judgment in RCA.No.503 of 1996 on the file of the VII Judge, Court of Small Causes, Chennai, which had arisen out of the order passed in RCOP.No.368 of 1992 on the file of the XIV Judge, City Civil Court, Chennai.

3.RCOP.No.2431 of 1991 was filed by the landlord against the tenant under Section 10(2)(i) and 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act (herein after referred to as 'the Act'). According to the petitioner in RCOP.No.2431 of 1991, the petitioner is the owner of an undivided 2/3 share in the petition schedule property as the same had been purchased by her under two sale deeds dated 11.03.1991 from one Tmt.Suhurlatha, the mother of the appellant in S.A.No.659 of 2007 (the 1st respondent therein). After intimating the attornment of tenancy, the petitioner had requested the tenant to pay arrears of rent. Admittedly the monthly rent for the petition schedule building is Rs.2,000/-. Even after showing the sale deeds dated 11.03.1991 to the tenant, the tenant had wantonly failed to pay the rent from the month of March-1991 to June 1991. The petitioner is presently residing in another rented building for a monthly rent of Rs.5,500/-. Hence, the petitioner requires the petition schedule building for her own occupation. Hence, the petition.

3(a)The respondent in his counter has contend that the first respondent is not the tenant for the petition scheduled building under the petitioner and the second respondent alone is the tenant. But the vendor of the petitioner viz. Suhurlatha is not the owner of the property, but one Niranjan is the owner of the property and upto October-1991 the rent was paid to the said Niranjan by the tenant and that the tenant came to know that there was a dispute between the said Niranjan and his mother Tmt.Suhurlathamma, the alleged vendor of the petitioner and hence, there is a delay in payment of rent. The tenant is also ready to deposit the future rent into the Court till the dispute between the landlord and his vendor and her son is settled.

4.RCOP.No.368 of 1992 was filed by the tenant ie., the second respondent in RCOP.No.2431 of 1991. According to the petitioner in RCOP.No.368 of 1992 (tenant), he is in occupation of the petition schedule building on a monthly rent of Rs.700/- originally and subsequently, the rent was enhanced to Rs.2,000/-. Accordingly the petitioner in RCOP.No.368 of 1992, the first respondent Niranjan was minor at the time of insertion of him in the petition scheduled property as a tenant and the second respondent was receiving the rent on behalf of the minor first respondent. Since the first respondent was pursuing his studies at Bangalore and that from the second respondent, the first respondent used to collect the rent as and when he visits to Chennai, and that since the first respondent had completed his studies in the year 1982, from October 1982 onwards till October 1991 the petitioner had paid the rent to the first respondent Niranjan. He would further state that he had received a notice from the second respondent claiming that the petition schedule building has been sold to her by the second respondent and that the third respondent had also filed RCOP.NO.2431 of 1991 against the tenant, claiming that the rent is due from March -1991 to June -1991 and that the tenant had committed wilful default in payment of rent. He would further contend that the second respondent had no right to execute the sale deeds in respect of the petition scheduled property in favour of the third respondent and that he had filed an application seeking the indulgence of the Court to permit him to deposit the future rent into the court.

4(a)The first defendant remained exparte. The second defendant in her counter would contend that even from the date of insertion of tenancy the petitioner was paying the rent only to the second respondent and that it is not correct to say that the rent was paid to the first respondent by the tenant from 1982 to October-1991. After she had executed the sale deeds in respect of the petition scheduled building in favour of the third defendant a notice was issued to the tenant / petitioner to pay the rent to the third respondent. Evan after the receipt of the said notice, the petitioner has not paid the rent to the third respondent (present landlady). After paying the rent to the second respondent for quite a long time, it is not open to the tenant to contend that the second respondent was not entitled to receive the rent and also it is not open to the tenant/petitioner to contend that the second respondent has no right to execute the sale deeds in respect of the petition schedule property in favour of the third respondent. The petitioner is liable to pay the rent from March -1991 to the third respondent. The arrears of rent from March-1991 to September-1992 come to Rs.38,000/- and the petitioner is liable to pay the future rent only to the third respondent and there is no necessity for him to deposit the rent into the court. Hence, the petition is liable to be dismissed. The third respondent in his counter would contend that the monthly rent for the petition schedule building is Rs.2,000/- and that the second respondent was the owner of the petition scheduled building from whom the third respondent had purchased the same on 11.03.1991 under the registered sale deeds. The third respondent has also informed the petitioner about her purchase of the petition schedule building on 11.03.1991 from the second respondent through her notice dated 15.04.1991. Even after the receipt of the said notice, the petitioner has failed to pay the future rent to the second respondent. Hence, the second respondent had filed RCOP.NO.2431 of 1991 for eviction of the tenant on the ground of wilfull default and also for owners occupation from March -1991, the petitioner has committed wilfull default in payment of rent. Hence, the petition is liable to be dismissed.

5.The learned trial Judge has conducted a joint trial in RCOP.No.2431 of 1991 and RCOP.No.368 of 1992. Before the trial Court, one E.S.Reddy husband of Sathyavathamma was examined as P.W.1 and Ex.P.1 to Ex.P.20 were marked. The tenant Subramanian had examined himself as R.W.1 and exhibited Ex.R.1. After going through the evidence both oral and documentary and after giving due deliberations to the submission made by the learned counsel appearing on both sides, the learned Rent Controller has ultimately come to the conclusion that the petitioner in RCOP.No.2431 of 1991 is not entitled to any relief and accordingly, dismissed RCOP.No.2431 of 1991 and allowed RCOP.No.368 of 1992 filed by the tenant permitting him to deposit the arrears of rent of Rs.8000/- being the rent due for the month of October-1991 to January-1992, and also the subsequent rent into the Court. Aggrieved by the findings of the learned Rent Controller, the petitioner in RCOP.No.2431 of 1991 had preferred RCA.No.487 of 1996 before the Rent Control Appellate Authority (VII Judge, City Civil Court, Chennai), and the respondent in RCOP.No.368 of 1992 preferred RCA.No.503 of 1996 before the Rent Control Appellate Authority (VII Judge, City Civil Court, Chennai).

6.The learned Rent Control Appellate Judge, who had heard both the appeals together, after going through the judgments of the learned Rent Controller in the said RCOPs and also after going through the evidence on record and after hearing the arguments of the learned counsel on both sides, has allowed the appeal in RCA.NO.503 of 2001 thereby dismissed RCOP.No.368 of 1992 filed under Section 9(3) of the Act and has allowed the appeal in RCA.No.487 of 1996 thereby reversed the findings of the learned Rent Controller in RCOP.No.2431 of 1991 thereby ordering eviction on the ground of willful default under section 10(2)(1) of the act alone, while confirming the findings of the learned Rent Controller in respect of section 10(3)(a)(iii) of the Act for owners occupation. Aggrieved by the findings of the learned Rent Control Appellate Authority, the tenant in RCOP.No.2431 of 1991 has preferred CRP.NPD.No.1489 of 2003 and the tenant/appellant in RCA.No.368 of 2003 has preferred CRP.NPD.No.1490 of 2003 before this Court.

7.Heard the learned counsel for the revision petitioner T.S.Rajamohan and the learned counsel for the respondent Mr.P.Subbha Reddy and considered their respective submissions.

8.Along with these civil revision petitions S.A.No.659 of 2007, which had arisen out of the decree and judgment in A.S.No.363 of 2003 on the file of the Additional District Judge, FTC.No.II, Chennai, which had arisen out of the judgment in O.S.No.12671 of 1996 on the file of the VIII Assistant Judge, City Civil Court, Chennai, was also heard and disposed of today. In respect of the petition scheduled property in both the RCOPs, the said suit O.S.No.12671 of 1996 was filed by Niranjan Reddy, the second respondent in RCA.No.503 of 1996, who is admittedly the son of the third respondent Mrs.Suhurlatha in RCA.503 of 1996, who had executed Ex.A.3 and Ex.A.4 sale deeds in O.S.No.12671 of 1996 in favour of Sathyavathamma, the petitioner in RCOP.No.2431 of 1991. The plaintiff in O.S.No.12671 of 1996 viz., Niranjan Reddy had filed the said suit for declaration declaring that the settlement deed Ex.A.5 (Ex.B.1) in the said suit, which was executed by him in the year 1982 in favour of his mother Suhurlatha / R2 in RCA.503 of 1996 / defendant in O.S.No.12671 of 1996, as nonest under law, since the same was obtained by his mother under undue influence. Niranjan Reddy, the second respondent in RCOP.No.503 of 1996, the plaintiff in O.S.No.12671 of 1996 has lost his case before the trial Court as well as the first appellate Court in A.S.No.363 of 2003 and also before this Court in S.A.No.659 of 2007, which has been disposed of today (07.03.2008) along with these RCOPs. So after the dismissal of S.A.No.659 of 2007, it is no longer open to the tenant in RCOP.No.2431 of 1991 / petitioner in RCOP.No.368 of 1992 to contend that the present landlady Sathyavathamma, the petitioner in RCOP.No.2431 of 1991 has no valid title in respect of the petition schedule properties. Even though RCOP.No.2431 of 1991 was filed by the landlady under Section 10(2)(i) and also under Section 10(3)(a)(iii) of the Act, the learned Rent Control Appellate Judge has allowed the appeal ordering eviction against the tenant only under Section 10(2)(i) of the Act. The landlady / petitioner in RCOP.No.2431 of 1991 has not preferred any

appeal against the cuncurent findings of the Courts below in respect of the dismissal of her application under section 10(3)(a)(iii) of the Act. According to the landlady / petitioner in RCOP.No.2431 of 1991, the tenant has committed willful default in payment of rent from the month of March-1991 to June-1991. The defence taken by the tenant is that he had paid the rent from the year 1982 to October-1991 to Niranjan. But he had produced only letter dated 10.08.1991 (EX.R1) said to have been written by Niranjan as to the fact that he had received the rent for the months March-1991 to June-1991. But he has not produced any document to show that he has been paying the rent from 1982 to October-1991 to the said Niranjan. Further, the author of Ex.R.1- Letter dated 10.08.1991 viz., Niranjan, was also not examined before the learned Rent Controller in RCOP proceedings to show that rent from March-1991 to June -1991 was paid to Niranjan. It is in evidence that after the purchase of the petition schedule properties by the present landlady viz. Sathyavathamma / petitioner in RCOP.No.2431 of 1991, she had issued notice under Ex.P.4 dated 15.04.1991 to the tenant Subramaniam. Even after the receipt of Ex.P.4-notice and after issuing reply under Ex.P.5, the tenant had not chosen to deposit or pay the arrears of rent. It is settled proposition of law that while pending RCOP if the tenant commits default in payment of future rent, that will amount to wilful default in payment of rent. To show his bonefide the tenant has field a petition under Section 9(3) of the Act under RCOP.No.368 of 1992 to deposit the rent into the Court, only on 17.2.1992 ie., 10 months after the issuance of notice by the landlady under Ex.P.4. Under such circumstances, the findings of the learned Rent Control Appellate Authority in RCA.No.487 of 1996 that the tenant had committed willful default in payment of rent and is liable to be evicted from the petition schedule building warrants no interference from this Court. Once, it is proved that the tenant has committed wilful default then there is no meaning in allowing the petition filed under Section 9(3) of the Act under RCOP.No.368 of 1992.

9.In fine, CRP.NPD.No.1489 & 1490 of 2007 are dismissed confirming the judgment in RCA.No.487 & 506 of 1996 on the file of the VII Judge, Court of Small Causes, Chennai. Time for vacating and handingover the vacant possession three months from today. Affidavit of undertaking to be filed within a week. No costs. Connected Miscellaneous Petitions are closed. At this juncture, it is represented by the learned counsel for the respondent that as per the order in CMP.No.16181 and 16182 of 2007, the tenant has deposited the 50% of the future rent to the credit of the RCOP.NO.2431 of 1991 on the file of the XIV Assistant Judge, Court of Small Causes, Chennai, and hence the petitioner in RCOP.No.2431 of 1991 may be permitted to withdraw the same. The request of the learned counsel for the respondent is acceded and the petitioner in RCOP.No.2431 of 1991 Tmt.Sathyavathamma is permitted to withdraw the rent which is in the credit of RCOP.NO.2431 of 1991 without furnishing any security and also petitioner in RCOP.No.2431 of 1991 Tmt.Sathyavathamma is entitled to the future rent till the tenant is vacating and handing over the vacant possession to the landlady Sathyavathamma. No costs.

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To,
1.The VII Judge, Court of Small Causes, Chennai.

2.The XIV Judge, Court of Small Causes,
Chennai.